IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5289 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

UMARSHALI MACHCHIWAD V.V. SEVASAHKARI MANDALI LTD.

Versus

DISTRICT REGISTRAR

Appearance:

1. Special Civil Application No. 5289 of 2002

MR BS PATEL for Petitioner No. 1

Ms.Harsha Devani,AGP for Respondents No. 1 & 2

Mr.Mangukia for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 22/07/2002

ORAL JUDGEMENT

Rule. Ms.Harsha Devani, Ld AGP appears and waives service of rule on behalf of respondent Nos 1 & 2

and Mr.Mangukia appears and waives service of rule on behalf of respondent No.3. With the consent of parties matter is taken up for final hearing.

2. The present petition is preferred by the petitioner against the order, dated 15.10.2001 passed by the District Registrar, Cooperative Societies and its confirmation in appeal No.15157/02 as per order dated 10.5.02 whereby the final order for winding has been passed.

3. Heard Mr.B.S.Patel for the petitioner and Ms.Harsha Devani, Ld.AGP for respondent Nos 1 & 2 and Mr.Mangukia for respondent No.3.

4. Mr.Patel for the petitioner submitted that as a matter of fact after the order dated 25.11.999 passed by the Dist.Registrar initially in the Appeal 2/02 the Additional Registrar as per order dated 29.12.2000 had partly allowed the appeal and had directed to decide after considering the position of the petitioner society for the accounting year 1999-2000 and to pass final order. Mr.Patel submitted that the progress report was also submitted on 4.4.2001 by UPC and inspite of the same the District Registrar proceeded on the basis that no report is submitted and the final order is passed on the basis of interim order. Mr.Patel submitted that as the report was forwarded by UPC it is presumed same must have been received by the office of the District Registrar. He submitted that the said aspect was also brought to the notice of the appellate authority but inspite of the same the order is confirmed.

5. On behalf of the District Registrar and Additional Registrar (Appeals) Ms.Devani has submitted that from the parawise comments received by her there is no reference about the receipt of progress report dated 4.4.01 and she submits that the authorities have proceeded on the basis that since no report is submitted the interim order is made as final order of winding up.

6. Upon the auery put by the court as to why the report is not forwarded by Regd.A.D.post Mr.Patel has submitted that since it is a small cooperative society of fishermen they did not that it was required to be sent by Regd.A.D.Post. Further it was also inquired as to whether the society was agreeable to pay the costs of Rs.5,000/-to the State Govt in case the matter is remanded and in response thereto on behalf of the petitioner Mr.Patel has shown readiness and willingness for paying the costs of Rs.5,000/-.

7. Considering the above, and since it is not clear from the record as to whether the progress report was in the file of the District Registrar or not, but, at the same time, since it is a matter pertaining to the winding up of the society, if the progress report, dated 4.4.01 is taken into consideration and the matter is considered afresh, no prejudice will be caused to any one. Therefore, I find that if a direction is given to the District Registrar to reconsider the matter keeping in view the progress report dated 4.4.01 the same would meet with the interest of justice.

8. Hence, the following directions are issued:

(i) The District Registrar, Cooperative Societies, Valsad shall consider the matter afresh in exercise of powers under section 107(3) of the Gujarat Cooperative Societies Act for passing the final order keeping in view the progress report, dated 4.4.01 copy whereof is produced at annexure "H" to the petition at page 42 and in view of the earlier order dated 29.12.2000 passed in appeal No.2/2. Such order shall be passed after providing opportunity of hearing to the representative of the society.

(ii) The petitioner society shall pay costs of RS.5,000/-to the State Govt, i.e. the Office of the District Registrar towards the costs of this petition.

(iii) The District Registrar shall take the decision as indicated above within a period of three months from the date of receipt of writ of this court and until the decision is taken by the District Registrar, the ad interim relief granted by this court earlier shall continue.

9. In view of the above, the orders dated 15.10.01 and 10.5.012 shall nopt remain in operation as and when the final order as indicated earlier is passed by the District Registrar under section 107(3) of the Act.

10. The petitio is allowed to the aforesaid extent. Rule is made absolute accordingly.

22.7.02 (JAYANT PATEL,J)